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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

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11 COMMERCE WEST INSURANCE
COMPANY,

12 Plaintiff,

13 v.

14 GEORGE ALLEN, MARY ROE,

15 Defendants.
16

CASE NO. 18-5828 RJB

ORDER ON COMMERCE WEST
INSURANCE COMPANY'S
MOTION TO LIFT STAY
ENTERED AT ECF 32

17 This matter comes before the Court on Plaintiff's Motion to Lift Stay Entered at ECF 32
18 ("Motion to Lift Stay"). Dkt. 33. The Court is familiar with the records and files herein and all
19 documents filed in support of and in opposition to the motion.

20 For the reasons stated below, the Motion to Lift Stay (Dkt. 33) should be denied.

21 **I. BACKGROUND**

22 On October 11, 2018, Plaintiff Commerce West Insurance Company ("Commerce West")
23 filed a complaint in this case seeking declaratory relief and an order that it has no duty to defend
24 or indemnify Defendant George Allen ("Dr. Allen") under a homeowners insurance policy with

1 respect to the claims of Defendant Mary Roe (“Ms. Roe”) in the underlying civil case against Dr.
2 Allen. *Mary Roe v. George S. Allen, et. al.*, Circuit Court of Oregon for Multnomah County,
3 Case No. 18CV23757, Second Amended Complaint for Sexual Assault and Battery; Medical
4 Negligence; Medical Battery; and Negligence. Dkts. 1; 12-6; and 16. There is also an underlying
5 criminal case pending against Dr. Allen. *State of Oregon v. George Solomon Allen*, Circuit Court
6 of Oregon for Washington County, Case No. 18CR40525; Dkt. 16.

7 In the instant case, on November 28, 2018, Commerce West filed a motion for summary
8 judgment. Dkt. 11. On December 17, 2018, Dr. Allen filed a motion to stay proceedings until
9 resolution of the underlying civil and criminal cases. Dkt. 15.

10 The Court granted, in part, and denied, in part, Dr. Allen’s motion to stay proceedings.
11 Dkt. 32. The Court held that a stay until judgment is entered in the underlying criminal case
12 should be granted, and that a stay until resolution of the underlying civil case should not be
13 granted. Dkt. 32. Additionally, the Court held that Commerce West’s motion for summary
14 judgment should be stricken, to be renoted, if appropriate, after the stay is lifted. Dkt. 32.

15 On March 28, 2019, Commerce West filed the Motion to Lift Stay. Dkt. 33. Commerce
16 West argues that the stay should be lifted because of three changes in circumstances:

- 17 1. The court in the underlying criminal case granted a motion to continue filed by Dr.
18 Allen, rescheduling the trial date from April 23, 2019, to July 9, 2019; the order also
19 notes that “**NO FURTHER CONTINUANCES**” are permitted. Dkt. 34-3 (emphasis
20 in original).
- 21 2. On February 14, counsel for Ms. Roe mailed an allegedly time-limited demand letter
22 to Commerce West “mak[ing] a clear and unequivocal demand for [a redacted
23 amount of money] under Dr. Allen’s Commerce West homeowner’s insurance
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1 policy” “in connection with injuries she sustained as the result of an incident
2 involving Dr. George Allen on July 21, 2016.” Dkt. 34-4.

- 3 3. Two additional civil lawsuits have been filed against Dr. Allen, for which Commerce
4 West is now, under a reservation of rights, defending Dr. Allen. Dkt. 33, at 2–3;
5 *Gregory v. Allen and NU U Laser Centers, PLLC*, Circuit Court of Oregon for
6 Multnomah County, Case No. 18CV45179, First Amended Complaint (alleging
7 Negligence, Medical Negligence, and Assault & Battery) (Dkt. 34-5); *Okel v. Allen;*
8 *NU U Laser Centers, PLLC; Northwest Asthma Allergy Center, P.C.; and George*
9 *Allen Living Trust*, Circuit Court of Oregon for Multnomah County, Case No.
10 19CV04712, Complaint (alleging Abuse of a Vulnerable Person, Battery, Assault,
11 Negligence, Intentional Infliction of Emotional Distress, and Fraudulent Conveyance)
12 (Dkt. 34-6).

13 Commerce West maintains that Dr. Allen’s homeowners insurance policy “in no way
14 covers the alleged sexual assaults or his alleged medical malpractice.” Dkt. 33, at 3. Commerce
15 West argues that “Defendants Allen and Roe are taking advantage of this Court’s issuance of a
16 stay The Continued stay in the instant matter should be lifted because the stay is prejudicing
17 Commerce West.” Dkt. 33, at 1. Commerce West also reiterates that the Court should have
18 applied the *Pipeline* factors in its Order on Motion to Stay and Motion for Summary Judgment
19 (Dkt. 32).

20 Defendants argue that the changes in circumstances described above do not warrant
21 lifting the stay and that the Motion to Lift Stay amounts to a belated and untimely motion for
22 reconsideration that should be denied. Dkts. 36; and 37.

1 First, this opinion discusses Defendants’ argument that the Motion to Lift Stay amounts
2 to an untimely motion for reconsideration. Second, it discusses the Motion to Lift Stay on the
3 merits. Third, the Court briefly discusses the applicability of the *Pipeline* factors. Finally, the
4 Court presents its conclusions and issues its order on the Motion to Lift Stay.

5 II. DISCUSSION

6 A. MOTION FOR RECONSIDERATION?

7 [LCR 7](h) Motions for Reconsideration

8 (1) *Standard*. Motions for reconsideration are disfavored. The court
9 will ordinarily deny such motions in the absence of a showing of
10 manifest error in the prior ruling or a showing of new facts or legal
11 authority which could not have been brought to its attention earlier
12 with reasonable diligence.

13 (2) *Procedure and Timing*. A motion for reconsideration shall be
14 plainly labeled as such. The motion shall be filed within fourteen days
15 after the order to which it relates is filed. The motion shall be noted
16 for consideration for the day it is filed. The motion shall point out
17 with specificity the matters which the movant believes were
18 overlooked or misapprehended by the court, any new matters being
19 brought to the court's attention for the first time, and the particular
20 modifications being sought in the court's prior ruling. Failure to
21 comply with this subsection may be grounds for denial of the motion.
22 The pendency of a motion for reconsideration shall not stay discovery
23 or any other procedure.

24 (3) *Response*. No response to a motion for reconsideration shall be
filed unless requested by the court. No motion for reconsideration will
be granted without such a request. The request will set a time when
the response is due, and may limit briefing to particular issues or
points raised by the motion, may authorize a reply, and may prescribe
page limitations.

LCR 7(h).

Defendants argue that Commerce West’s Motion to Lift Stay amounts to an untimely motion
for reconsideration. “The Court entered its order on the stay on January 15, 2019. Any motion for
reconsideration was due by January 29, 2019. Plaintiff does not explain why it waited until March
28, 2019—nearly two months after the deadline—to file its motion.” Dkt. 37, at 6.

1 To the extent that Commerce West’s Motion to Lift Stay is based on the three changes in
2 circumstances above, the Court disagrees with Defendants that the Motion to Lift Stay amounts to a
3 motion for reconsideration. The three changes in circumstances described above are relevant
4 considerations that the Court should consider with respect to the stay on proceedings ordered by the
5 Court in Dkt. 32.

6 **B. MOTION TO LIFT STAY**

7 A district court has broad discretion to stay proceedings as an incident to its power to
8 control its own docket. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005); *Clinton v.*
9 *Jones*, 520 U.S. 681, 706-07 (1997) (citing *Landis v. North American Co.*, 299 U.S. 248, 254
10 (1936)).

11 When there is an independent proceeding related to a matter before a trial court, the Ninth
12 Circuit has held that a trial court may “find it efficient for its own docket and the fairest course
13 for the parties to enter a stay of an action before it, pending resolution of independent
14 proceedings which may bear upon the case.” *Mediterranean Enters., Inc. v. Ssangyong Corp.*,
15 708 F.2d 1458 (9th Cir. 1983). For a stay to be appropriate, it is not required that the issues of
16 such proceedings are necessarily controlling of the action before the court. *Id.* However, a stay
17 may be improper where the independent proceeding is “unlikely to decide, or contribute to the
18 decision of, the factual and legal issues” in the action for which the stay is requested. *Lockyer*,
19 398 F.3d 1098 at 1113. In deciding whether to abstain, the Ninth Circuit instructs courts to
20 consider “whether the declaratory action will settle all aspects of the controversy; whether the
21 declaratory action will serve a useful purpose in clarifying the legal relations at issue; whether
22 the declaratory action is being sought merely for the purposes of procedural fencing or to obtain
23 a ‘res judicata’ advantage; or whether use of a declaratory action will result in entanglement
24 between the federal and state court systems.” *Gov’t Employees Ins. Co. v. Dizol*, 133 F.3d 1220,

1 1225, n.5 (9th Cir. 1998). Indefinite stays are disfavored by courts. *See Yong v. I.N.S.*, 208 F.3d
2 1116, 1119 (9th Cir. 2000).

3 In determining whether to issue a stay based upon the outcome of a case involving
4 different litigants, a court must weigh three relevant interests: (1) the possible damage that may
5 result from the granting of a stay; (2) the hardship or inequity that a party may suffer in being
6 required to go forward; and (3) the orderly course of justice measured in terms of the simplifying
7 or complicating of issues, proof, and questions of law that could be expected from a stay. *CMAX,*
8 *Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

9 The Court notes that it does not repeat its discussion of these factors from its Order on
10 Motion to Stay and Motion for Summary Judgment (Dkt. 32). Below, the Court considers and
11 incorporates into that discussion the three changes in circumstances described above: first, the
12 continuance of the underlying criminal case; second, Ms. Roe's allegedly time-limited demand
13 letter; and, third, the two additional civil lawsuits filed against Dr. Allen.

14 1. Possible Damage That May Result from the Granting of a Stay

15 a. *Underlying Criminal Case Continuance*

16 Commerce West appears to make two primary arguments related to damage that may
17 result from the granting of a stay and that may be exacerbated by the continuance granted in the
18 underlying criminal case: (1) irreparable damage and prejudice to Commerce West; and (2) the
19 possibility of indefinite continuances. *See* Dkts. 33; and 39.

20 i. Irreparable Damage and Prejudice to Commerce West

21 Commerce West argues that it has suffered irreparable damage and prejudice. Dkt. 33. "It
22 is undisputed that Commerce West has continued to incur costs associated with the underlying
23
24

1 civil matter, as there is only a partial abatement in place with respect to Defendant Allen, and not
2 with respect to the clinic entity defendants.” Dkt. 33, at 5.

3 However, with respect to the underlying civil case, Commerce West has shown that it is
4 defending, pursuant to a reservation of rights, Dr. Allen only—not the clinic entity defendants. In
5 its order granting the stay, the Court noted, “if a stay is granted until judgment is entered in the
6 underlying criminal case, the possible harm to Commerce West appears slight A stay in the
7 instant case would not significantly change Commerce West’s position.” Dkt. 32, at 6. This
8 appears to still be the case.

9 Commerce West has only vaguely described the damages and costs it may or may not
10 have incurred defending Dr. Allen. Commerce West wrote, partially in a footnote, “Allen cannot
11 possibly dispute that Commerce West has expended resources in defending him against the three
12 civil actions.[] Should the Court request evidence to support the same, Commerce West requests
13 the opportunity to submit a declaration establishing the costs associated therewith.” Dkt. 39, at 5
14 n.4.

15 The Court is aware that proceeding under a reservation of rights can be expensive to an
16 insurer.

17 ii. Possibility of Indefinite Continuances

18 Commerce West argues that a “continuance may very well be indefinite.” Dkt. 39, at 4.
19 Commerce West argues “that the discovery received includes more than a dozen uncharged other
20 bad act accusers.” Dkt. 39, at 4; *see also* Dkt. 34-2, at 2. Commerce West appears to suggest that
21 there is a “likelihood [Dr. Allen] will seek additional continuances.” Dkt. 39, at 4.

22 Commerce West’s argument is speculative. The underlying criminal case apparently has
23 a trial date scheduled for July 9, 2019, with no further continuances permitted. Dkt. 34-3.

1 Additionally, in an affidavit filed in support of the motion to continue the criminal case trial date,
2 Stephen A. Houze, an attorney with the office representing Dr. Allen, stated, in part: “Trial on
3 the proposed dates would bring this matter to conclusion within approximately 12 months from
4 arraignment.[] I have conferred with Senior Deputy District Attorney Megan Johnson, and we
5 anticipate the trial in this matter lasting two weeks.” Dkt. 34-2, at 2.

6 In any case, the Court can (and does, below) order the Parties to report intermittently to
7 safeguard against any chance of indefinite delay.

8 *b. Ms. Roe’s Allegedly Time-limited Demand Letter*

9 Commerce West asserts that, “in an attempt to take advantage of the procedural posture,
10 Counsel for Defendant Roe sent a time limited demand to Commerce West, seeking payment of
11 monies under the policy, before the criminal matter was set for trial and before the stay in this
12 matter would be lifted or the issue of coverage could in anyway [sic] be resolved.” Dkt. 33, at 2.

13 To the extent that Commerce West argues that Ms. Roe’s alleged conduct was improper,
14 the Court disagrees. Commerce West is free to make counteroffers or reject Ms. Roe’s demand
15 letter, and it has apparently done so. *See* Dkt. 36, at 5.

16 *c. Two Additional Civil Lawsuits*

17 The additional civil lawsuits against Dr. Allen are not before the Court and are irrelevant
18 to its decision here. The issue before the Court is whether insurance coverage exists under the
19 policy between Commerce West and Dr. Allen for claims made in the underlying civil case—not
20 the two additional civil cases filed against Dr. Allen.

21 2. The Hardship or Inequity that a Party May Suffer if Required to Go Forward

22 Nothing about the changes in circumstances described above affects the Court’s analysis
23 of this factor.

1 3. The Orderly Course of Justice Measured in Terms of the Simplifying or
2 Complicating of Issues, Proof, and Questions of Law that Could be Expected
3 from a Stay

4 Nothing about the changes in circumstances described above affects the Court's analysis
5 of this factor.

6 4. Conclusion

7 The factors considered above and in the Court's Order on Motion to Stay and Motion for
8 Summary Judgment (Dkt. 32) still weigh in favor of staying the case until judgment is entered in
9 the underlying criminal case.

10 **C. PIPELINE FACTORS?**

11 Commerce West reiterates:

12 In Washington, the appropriateness of a civil stay for pending
13 criminal proceedings is determined using the *Olympic Pipeline*
14 factors. *Chaffee [v. Keller Rohrback]*, 200 Wn. App. [66,] 78. The
15 Court previously indicated *Pipeline* is not applicable, as the instant
16 matter is not a parallel case to the criminal matter. However,
17 Defendant Allen is making the same arguments in this matter as he
18 made with respect to the civil matter—as such, *Pipeline* is
19 applicable, and the factors therein, as previously briefed, do not
20 favor a stay.

21 The eight factors add two additional considerations: a) the
22 similarities between the civil and criminal cases; and b) the status
23 of the criminal case. *Id.* In the instant matter, the factors
24 overwhelmingly indicate that a stay is not appropriate.

Dkt. 33, at 8–9.

 The Court notes that it has not invited reconsideration or further discussion of the
applicability of the *Pipeline* factors in this case. Nevertheless, in the interest of hopefully laying
the issue to rest, the Court observes that, here, analysis of the *Pipeline* factors leads to the same
conclusion as analysis of the *CMA* factors.

1 The Court maintains that the *CMAX* factors discussed above are appropriate to this case
2 and that the *Pipeline* factors are inapplicable because the underlying criminal case is not a
3 parallel case.

4 **D. CONCLUSION**

5 The Court should deny Commerce West's Motion to Lift Stay (Dkt. 33). The Parties
6 should submit a joint status report to the Court within two weeks of the entry of judgment in the
7 underlying criminal case, but no later than August 1, 2019.

8 **III. ORDER**

9 Therefore, it is hereby **ORDERED** that:

- 10 • Commerce West's Motion to Lift Stay (Dkt. 33) is **DENIED; and**
11 • The Parties shall submit a joint status report to the Court within two weeks of the
12 entry of judgment in the underlying criminal case, but no later than August 1,
13 2019.

14 IT IS SO ORDERED.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
16 to any party appearing pro se at said party's last known address.

17 Dated this 24th day of April, 2019.

18 

19 ROBERT J. BRYAN
20 United States District Judge